



Federal Communications Commission
Washington, D.C. 20554

December 18, 2019

WTGS Licensee, LLC
WFGX Licensee, LLC
Harvey Arnold
10706 Beaver Dam Road
Cockeysville, MD 21030

Re: Requests for Extension of
Construction Permit
WTGS, Hardeeville, SC
WFGX, Fort Walton Beach, FL
Facility ID Nos. 6554 and 27245
LMS File Nos. 0000093626 and
0000093628

Dear Licensee,

On December 17, 2019, WTGS Licensee, LLC, the licensee of Station WTGS, Hardeeville, South Carolina (WTGS) and WFGX Licensee, LLC, the licensee of Station WFGX, Fort Walton Beach, Florida (WFGX) (collectively "Licensee" and "Stations"), filed the above captioned applications seeking extensions of the Stations' construction permit expiration dates and waiver of the 90-day construction permit extension filing deadline. For the reasons below, we grant Licensee's requests and extend the construction permit expiration date for WTGS to May 16, 2020 and for WFGX to April 16, 2020.

Background. Pursuant to Section 73.3700(b)(5) of the Commission's rules, a station may request a single extension of its construction permit deadline of up to 180 days to complete construction of its post-auction facility.¹ Grant of an extension of the construction permit deadline does not alter the deadline by which a station must cease operating on its pre-auction channel. A station anticipating the need for an extension must submit an extension application using FCC Form 2100, Schedule 337, not less than 90 days before the assigned construction permit deadline.² For Phase 7 stations, such application was due by October 21, 2019. The application must demonstrate that the station is unable to complete construction on time due to circumstances that were either unforeseeable or beyond the station's control.³ In addition, a waiver of the application filing deadline is appropriate where the particular facts would make strict compliance inconsistent with the public interest and deviation from the general rule would

¹ See 47 CFR § 73.3700(b)(5). All subsequent requests for additional time to construct are subject to the Commission's tolling provisions, 47 CFR § 73.3598(b).

² 47 CFR § 73.3700(b)(5)(iv).

³ The *Incentive Auction R&O* provides examples of six circumstances that might justify an 180-day extension of a station's post-auction construction permit: (1) weather related delays; (2) delays in construction due to the unavailability of equipment or a tower crew; (3) tower lease disputes; (4) unusual technical challenges; or (5) delays caused by the need to obtain government approvals, such as land use or zoning approvals, or to observe competitive bidding requirements prior to purchasing equipment or services; and (6) financial hardship with sufficient supporting evidence. See *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, GN Docket No. 12-268 et. al., Report and Order, 29 FCC Rcd 6567,6804-05, paras. 581-2 (2014) (*Incentive Auction R&O*); 47 CFR § 73.3700(b)(5)(ii) and (iii).

relieve hardship, promote equity, or produce a more effective implementation of overall policy on an individual basis.⁴

WTGS was repacked from channel 28 to channel 26 and WFGX from channel 50 to channel 14. The Stations were assigned to transition Phase 7 which has a phase completion date of January 17, 2020. All repacked stations for Phase 7 were issued a construction permit with an expiration date of January 17, 2020. The Stations pledge to cease operations on their pre-auction channels by the phase completion date and operate temporary facilities on their post-auction channels while they complete construction of their permanent post-auction facilities.⁵

Licensee states that there has been a delay in completing construction of each of the Stations' post-auction channel facilities due to equipment delivery delays and tower crew scheduling delays. As a result, Licensee does not expect to complete construction of either of the Stations' facilities by the Phase 7 completion date. Therefore, Licensee seeks an extension for WFGX to April 16, 2020 and for WTGS to May 16, 2020.

Licensee also requests waivers of the 90-day construction permit extension filing deadline because it did not know for certain it would require extensions at the time of the deadline.

Discussion. Upon review of the facts and circumstances presented, we find Licensee's requests to extend the construction permit deadline to construct the Stations' post-auction facilities meets the requirements for a construction permit extension. Licensee has demonstrated that an extension is needed for each Station because of equipment delivery delays and tower crew scheduling delays. We also find that grant of this extension request is not likely to negatively impact the overall transition schedule. The Stations have pledged to cease operations on their pre-auction channels by the Phase 7 completion date and will operate temporary facilities on their post-auction channels. To the extent some viewers are unable to receive the Stations' signal while they operate their temporary facilities, we believe that Licensee has every incentive to ensure viewers are fully informed about the Stations' transition plans. Finally, we find that waiver of the 90-day construction permit extension filing deadline is in the public interest and consistent with the Commission's general waiver standard because Licensee was unaware at the time an extension request was due that an extension of the Stations' construction permits would be needed.⁶

We remind Licensee that pursuant to the Spectrum Act, the Stations are eligible for reimbursement from the TV Broadcast Relocation Fund (Fund) of costs "reasonably incurred . . . in order for the licensee to relocate its television service from one channel to the other."⁷ Additional expenses incurred, for instance, as a result of the grant of changes in the Stations' transition plans that are not related to the post-incentive auction channel change, may not be reimbursable from the Fund.

⁴ See *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) and *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1072 (1972); 47 CFR § 1.3 (waiver for good cause shown).

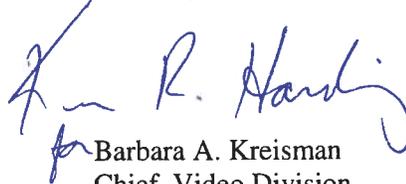
⁵ See LMS File Nos. 0000093629 and 0000093624.

⁶ See *supra* note 4.

⁷ See *Media Bureau Finalizes Reimbursement Form for Submission to OMB and Adopts Catalog of Expenses*, GN Docket No. 12-268, Public Notice, 30 FCC Rcd 11701, 11701-02 (MB 2015). See also *Incentive Auction R&O*, 29 FCC Rcd at 6821, para. 622 ("The appropriate scope of 'costs reasonably incurred' necessarily will have to be decided on a case-by-case basis.").

The above facts considered, WTGS Licensee, LLC and WFGX Licensee, LLC's applications for extension of construction permit expiration date **ARE GRANTED**. The construction permits (LMS File Nos. 0000027450 and 0000034394) for WTGS, Hardeeville, South Carolina **IS EXTENDED to May 16, 2020** and WFGX, Fort Walton Beach, Florida **IS EXTENDED to April 16, 2020**. Grant of this extension does not permit the Stations to recommence operation on their pre-auction channels after ceasing operation or after January 17, 2020, whichever occurs first. We also remind Licensee that any subsequent requests for extension of its construction permit deadline will be subject to the Commission's tolling provisions.⁸

Sincerely,

A handwritten signature in blue ink that reads "Barbara A. Kreisman". The signature is written in a cursive style and is positioned above the typed name.

Barbara A. Kreisman
Chief, Video Division
Media Bureau

cc (via electronic mail): Paul A. Cicelski, Esq.

⁸ See 47 CFR § 73.3700(b)(5)(i) (referencing 47 § CFR 73.3598(b)).